



## **Economic Impact Analysis Virginia Department of Planning and Budget**

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### **12 VAC 35-115 – Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation, and Substance Abuse Services; Dept. of Mental Health, Mental Retardation, Substance Abuse Services**

March 20, 2000

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The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 9-6.14:7.1.G of the Administrative Process Act and Executive Order Number 25 (98). Section 9-6.14:7.1.G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

### **Summary of the Proposed Regulation**

The Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) is revising and consolidating three existing sets of human rights regulations into the proposed regulation. The new regulation sets forth the human rights guaranteed for individuals receiving services in any facility or program licensed, funded, or operated by the department. The proposed regulation addresses legal rights; evaluation, treatment, and discharge; treatment under the least restrictive conditions; participation in treatment decisions; research and work activities; disclosure of confidential information; and the process and remedies individuals can pursue to address violations of these rights. Specific changes in the proposed regulation include:

- Changing the format of the regulation, simplifying the language, and updating the standards and terminology to reflect current industry practice;

- Clearly defining the composition, role, and function of the internal human rights system, the Local Human Rights Committees, and the State Human Rights Committee;
- Requiring monitoring and evaluation of provider compliance with the regulation and establishing procedures for enforcement and sanctions for violations of human rights;
- Setting forth time frames and clearer procedures for the resolution process in the internal human rights system;
- Establishing more stringent procedures for the application, review, and approval of variances from specific standards or procedures in the regulation;
- Prohibiting employees of programs and facilities operated, funded, or licensed by the department from serving as the authorized representative of a consumer in the program; and
- Expanding the requirements for the reporting of human rights data and release of data to the public.

## **Estimated Economic Impact**

The Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) currently maintains three separate sets of human rights regulations:

*Rules and Regulations to Assure the Rights of:*

- *Residents of Facilities Operated by DMHMRSAS (12 VAC 35-110)*
- *Patients of Psychiatric Hospitals and Other Psychiatric Facilities Licensed by DMHMRSAS (12 VAC 35-120)*
- *Clients in Community Programs Licensed or Funded by DMHMRSAS (12 VAC 35-130)*

These regulations have not been revised since the mid-1980s and the department has identified numerous problems with the existing regulations. Examples of such problems are inconsistencies among rights afforded individuals in different settings, changes in law and industry practice since 1983 are not reflected in the existing regulations, and time frames for the review and resolution of complaints are not specified. The proposed regulation addresses these issues and also incorporates recommendations made by the Joint Subcommittee Studying the Future Delivery of Publicly Funded Mental Health, Mental Retardation and Substance Abuse Services [HJR 225 (1998), formerly HJR 240 (1996)].

Many of the proposed changes are procedural or technical in nature and are unlikely to have economic consequences. However, the following changes may have a significant impact on providers and consumers of mental health services.

### **Consolidation of Regulations**

First, consolidating the three existing regulations into a single regulation will eliminate duplication and reduce the burden of multiple regulations on public and private programs and facilities that provide inpatient and outpatient services. The consolidated regulation establishes a single, consistent set of standards to protect the rights of persons with mental illnesses, mental retardation, and substance abuse problems regardless of the treatment setting and reduces the confusion for consumers and families of individuals who move from one type of program to another (e.g. inpatient to community program) each with a separate set of human rights regulations. These benefits are expected without any increase, and even possibly a modest reduction, in regulatory compliance costs.

### **Human Rights Committees**

Current membership of the State Human Rights Committee (SHRC) and the Local Human Rights Committees (LHRCs) is required to be broadly representative of consumer and professional interests in the community; however, proportions of consumer and professional representation are not specified. During the 1999 General Assembly, the SHRC and LHRCs were codified and one-third of the appointments made to these committees must be consumers or family members of consumers, with at least two consumers who are receiving services on each committee. In addition, no employee of DMHMRSAS, a Community Service Board, or a program licensed by the department can serve on the Committee of the program in which they are employed. The proposed regulations reflect these statutory changes. Clearly defining the composition of the human rights committees should ensure inclusion of adequate consumer and family representation and participation in the human rights protection process.

### **Enforcement of Regulation and Complaint Resolution Process**

The proposed regulation includes new provisions for monitoring and enforcement of the regulation through sanctions such as funds withdrawal, fines, and/or other penalties for non-compliance. The addition of these measures can be expected to increase compliance with the

human rights standards set forth in the regulation which could in turn increase the quality of care provided to Virginians with mental illnesses, mental retardation, or substance abuse problems.

The regulation also delineates the process individuals can pursue to address alleged violations of human rights. Many time frames for the review and resolution of complaints are either not specified in the existing regulations or are too lengthy to expeditiously resolve complaints. The proposed regulation clarifies the process and establishes tighter time frames for each stage of review. This change can be expected to reduce the length of time of the resolution process. Although there may be some costs associated with quicker processing, there is also substantial value to faster resolution of complaints of human rights violations.

### **Variations**

The proposed regulation establishes more stringent procedures for the application, review, and approval of variances from specific standards or procedures in the regulation. According to the department, this reflects its philosophy that the human rights guaranteed in these regulations are fundamental and should only be waived in limited situations, that is

*“... when the provider has tried to implement the relevant requirement without a variance and can provide objective, documented information that continued operation without a variance is not feasible or will prevent the delivery of effective and appropriate services and supports to individual (12 VAC 35-115-200 A).”*

While this change may reduce flexibility for some providers, protecting basic human rights has substantial economic value.

### **Authorized Representatives**

The 1999 General Assembly passed legislation that prohibits employees of programs and facilities operated, funded, or licensed by the department from serving as the authorized representative of a consumer in the program (unless related by blood to the consumer).

Recognizing that some facilities may have difficulty locating persons to serve in this capacity, DMHMRSAS has set aside money to assist with finding and paying for guardians and has initiated collaboration efforts with local and regional Public Guardian Programs. Assuming that capable representation is obtained for individuals without next-of-kin, this change could reduce

potential conflicts of interest and benefit patients unable to make informed decisions regarding their care.

### **Data Reporting**

The proposed regulation expands the requirements for the reporting, submission, and the release of human rights information to the public. Under the new regulation, all public and private providers would be required to report results of abuse and neglect investigations, deaths and serious injuries, seclusion and restraint data, and other information on human rights activities. State-operated programs are already required to report this information. Licensed facilities have been required to report only deaths and serious injuries. The additional reporting requirements may slightly increase regulatory compliance costs borne by programs and facilities but at the same time, benefit consumers and the public by providing data on operations and performance of all programs and facilities operated, funded, or licensed by the department.

### **Businesses and Entities Affected**

There are 15 DMHMRSAS operated mental health and mental retardation facilities and 401 licensed organizations, including Community Service Boards (CSBs), private psychiatric hospitals, and other providers, that will be affected by this revised regulation.

### **Localities Particularly Affected**

No localities are particularly affected by the proposed regulation.

### **Projected Impact on Employment**

The proposed regulation is not anticipated to have a significant effect on employment.

### **Effects on the Use and Value of Private Property**

The proposed regulation is not anticipated to have a significant effect on the use and value of private property.